THE HON'BLE SMT JUSTICE T.MEENA KUMARI

and

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

WRIT PETITION NO : 13061 of 2005

Dated: 06.09.2005

Between:

1.The Union of India, rep., by its Secretary to Government of India, Ministry of Railways, New Delhi and others.

..Petitioners

and

S.Somasundaram

..Respondent

THE HON'BLE SMT JUSTICE T.MEENA KUMARI

and

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

WRIT PETITION NO : 13061 of 2005

ORDER: (Per the Hon'ble Smt Justice T.Meena Kumari)

Challenging the order dated 23.11.2004 in O.A.No.116 of 2004 on the file of the Central Administrative Tribunal, Hyderabad, the present writ petition has been preferred by the petitioners.

02. The respondent herein is the applicant and the petitioners are the respondents beforel the tribunal. The status of the parties will be referred to as arrayed before the tribunal for the sake of convenience.

03. The facts, which are discernible from the order of the tribunal, the memorandum of grounds and other documents brought on record and are necessitous to be stated, are that

04. The applicant was selected and appointed as a Temporary Loading Inspector (Food Grains) and discharged duties from 15.2.1946 to 15.1.1951. When the said post was abolished due to closure of the Special Scheme, he was transferred to the Taluk Office of Civil Supplies Department at Vizianagaram as Temporary Clerk on 6.3.1951 and continued there till 11.9.1951 and transferred as Temporary Loading Inspector (Food Grains) Visakahapatnam. On 13.9.1951, he took charge and continued till 10. 6.1954 when the post was abolished due to the closure of the Special Scheme of the Madras Government. After that, the Government declared that preference would be given in respect of employment in Central Service to those, who had served the Civil Supplies Department. The applicant was selected and appointed as Clerk at Anakapalli on 12.11.1955. Since then, he had worked in various branches of the Commercial Department of the Southern Railway. Subsequently, he was alloted to Bezawada Division in the Commercial Department. On 31.5.1981 he was retired on attaining the age of Superannuation. While in service, he made a representation dated 17.11.2001 to the authorities requesting to take into account the length of service rendered by him in Civil Supplies Department for the purpose of dertemining his terminal benefits and also fixation of his pension. As he did not receive any response, he made another representation 3.10.2002 to the Pension Adalat and he was informed that the Railways had no record in support of the claim and as such, the same could not be entertained at this distant date. Subsequently on 13.1.2003, he made another representation enclosing the material in support of his claim, but no action had been taken nor even reply was furnished. Hence, he filed the O.A.

05. Controverting the allegations made in the petition, the respondents filed counter, wherein, it has been stated that the applicant filed the O.A before the

Tribunal for counting his alleged service said to have been rendered by him in Civil Supplies Department of Madras State and Food Grains Department for the period from 15.2.1946 to 10.6.1954. The respondents have stated that the only record that is available with them at this distant point of time i.e., more than 22 years from the date of his retirement on 31.5.1981, was the Service Register of the applicant and the settlement case file. As per the Service Register, the applicant was appointed as Commercial Clerk on 12.11.1955 and there was no entry in the Service Register to the effect that he was appointed in Railways against surplus account from other Department. The applicant served in Railways from 12.11.1955 to 31.5.1981 and there was no record in evidence of having represented his case at any point of time for counting his alleged service in the State Government for the purpose of pensionary benefits. The applicant had never represented about the issue raised in the O.A either during his service period or at the time of his retirement on 31.5.1981. He filed the O.A after a lapse of more than 45 years from the date of his appointment and after a lapse of 22 years from his retirement from service in Railways. He also did not file any valid document in support of his claim. Therefore, the claim of the applicant was barred by limitation, latches and negligence.

06. The contention of the learned counsel for the applicant is that the request of the applicant was liable to be acceded to in view of the Rule 28 of the Railway Services (Pension) Rules, 1993 whereunder the Government servants could be allowed the benefit of counting their qualifying service under the State and Central Governments for grant of pension by the Government where they retire. He further contended that if the 9 years of service is taken into consideration along with the 26 years of service in the respondent-organization, the applicant will be entitled to the full pension. It is further contended that as the service of 26 years in respondent-organization, was alone taken into consideration, the applicant was not getting full pension.

07. The contention of the learned counsel for the respondents that the applicant was replied vide letter dated 10.12.2002 that no record was available to verify his claim at this distant point of time after a lapse of 22 years from the date of his retirement on 31.5.1981. The applicant has represented his case for the first time after a period of more than 45 years from the date of his appointment. In the absence of any entry of documentary evidence in his Service Register to

the effect that he was appointed in Railways on account of having been rendered surplus in grain shops attached to Railways, his claim for taking the alleged service in the so called Civil Supplies Department could not be entered. There was prescribed period of preservation of records depending upon their relevancy and in any case, the administration could be expected to keep the old records for more than 20 to 40 years. He further contends that in the absence of any valid proof that the applicant had rendered temporary service in the Government, the benefit of counting his service for the purpose of pensionary benefits could not be extended to him as per the provisions under Rule 28 of Railway Services (Pension) Rules, 1993.

08. Heard the learned counsel on either side.

09. Perused the entire material on record and the order impugned.

10. During the pendency of the writ petition, the applicant died and as such, his wife, Smt.Rajeswari, was brought on record as his Legal representative.

11. There is no dispute as to the provisions of the Rule 28 whereunder the qualifying service of an employee both in State and Central Government can be counted. The controversy in this case, is only with regard to the non-availability of the relevant entries in the Service Register. At this stage, it is brought to the notice of this Court that originally, the applicant had worked under the Madras Government and subsequently after the formation of South Central Railway, he was allotted to Vijayawada Division and therefore, the necessary record may be available with the Madras Division.

12. There is also no dispute that the applicant was retired from service, but his case for full pension could not be considered only due to non-availability of the records.

13. In this back ground of the matter, without expressing any opinion on the merits of the case, we feel it appropriate to give liberty to the wife of the applicant to submit her representation to the Government of Madras to consider the case of the applicant for sanction of pensionary benefits under any other rule provided under any scheme.

14. Subject to the above observation, the writ petition is disposed of.

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JUSTICE T.MEENA KUMARI

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JUSTICE P.LAKSHMANA REDDY

06.09.2005

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